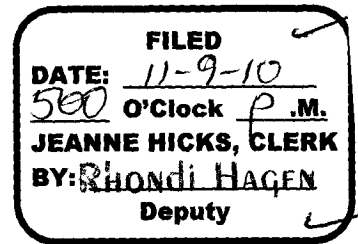


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B

JEANNE HICKS, CLERK

HON. WARREN R. DARROW

BY: R. Hagen, Deputy Clerk

CASE NO. V1300CR201080049

DATE: November 9, 2010

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney
Sheila Polk/Bill Hughes/Steven Sisneros
(via OnBase),

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly
(via electronic mail)
(Co-Counsel for Defendant)

(Defendant)

Luis Li/Brad Brian/Truc Do
MUNGER TOLLES & OLSON LLP
355 South Grand Avenue Thirty-Fifth Floor
Los Angeles, California 90071-1560,
(Co-Counsel for Defendant, *Pro Hac Vice*)

HEARING ON:	NATURE OF PROCEEDINGS	COURT REPORTER
ORAL ARGUMENT / EVIDENTIARY HEARING RE PENDING		Mina Hunt
MOTIONS – Day One		

START TIME: 9:15 a.m.

TELEPHONIC APPEARANCES:

- Sheila Polk, Counsel for State
- Kathy Durrer, Assistant to Counsel for State
- Detective Ross Diskin, Case Agent
- Tom Kelly, Co-Counsel for Defendant
- Luis Li, Co-Counsel for Defendant
- Truc Do, Co- Counsel for Defendant
- Marian Seifter, Co-Counsel for Defendant

Defense Counsel waive Defendant's appearance.

Counsel Kelly invokes the Rule Excluding Witnesses.

Counsel for State advises the first matter to be addressed this morning is the Rule 404(B) hearing. Counsel for State presents an opening statement during which Counsel advises that the State intends to present testimony and evidence regarding events occurring from 2003 through 2009 in order to meet its burden of proof.

Counsel Kelly presents an opening statement. Defense Counsel objects to any witness presenting testimony as to what occurred in 2009 as such testimony may taint the potential jury pool. Counsel Li requests that the State make an offer of proof as to what the evidence may be.

Oral argument ensues regarding witness testimony and offer of proof.

The Court finds that there are instances where courts, in Rule 404(B) context, do get into proof regarding a case at issue and it has to do with consolidation and cross admissibility. The Court further finds that there is precedent for this type of analysis.

Oral argument continues.

The Court addresses the State regarding the Defense's request for an offer of proof indicating what the State intends to show regarding 2009 rather than having testimony. Counsel for State responds regarding the offer of proof issue and requests to proceed.

Counsel Kelly presents additional argument regarding witnesses testifying today

The Court understands Defense Counsel's point of having an offer of proof. However it does not seem that there has been communication and interviewing. The hearing will proceed with testimony evidence Counsel are advised that Rule 104 applies

Devira ("Amayra") Hamilton is sworn and testifies.

Exhibits 16, 17 and 18 are offered and admitted into evidence without objection.

The witness is admonished and excused for a recess.

~~~Recess~~~

At 11 05 a m. the hearing reconvenes with all previously appearing parties present.

Counsel for State advises the Court that Michael Hamilton may be a trial witness and requests permission that Mr. Hamilton be permitted in the courtroom today during testimony of his spouse, Devira Hamilton Counsel Li objects.

**IT IS ORDERED denying** the oral motion and Mr. Hamilton exits the courtroom.

Devira ("Amayra") Hamilton resumes the witness stand for further testimony.

Exhibit 14 is offered and admitted into evidence without objection.

~~~Noon Recess~~~

At 1 17 p.m. the hearing reconvenes with all previously appearing parties present.

Devira ("Amayra") Hamilton resumes the witness stand for further testimony.

Exhibit 79 is offered. There being an objection by Counsel for State, **IT IS ORDERED** overruling the objection and Exhibit 79 is admitted for purposes of this hearing.

Exhibit 80 is offered. Counsel for State voir dres the witness. There being an objection by Counsel for State, **IT IS ORDERED** overruling the objection and Exhibit 80 is admitted into evidence.

Counsel for State voir dres the witness.

The witness is admonished and excused.

Theodore Martin Mercer is sworn and testifies.

Exhibits 19 and 21 are offered and admitted into evidence without objection.

The witness is admonished and excused for a recess.

~~~Recess~~~

At 3.07 p.m. the hearing reconvenes with all previously appearing parties present.

Theodore Martin Mercer resumes the witness stand for further testimony

Exhibits 20, 22, 23, 24, 25 through 37 inclusive, 41, 42, 45, 46, and 47 through 78 inclusive are offered and admitted into evidence without objection.

The witness is admonished and excused.

Debra Jean Mercer is sworn and testifies

The witness is admonished and excused for the day.

The Court and Counsel discuss the State's burden of proof and the evidence being presented regarding events occurring in 2009, hearsay witnesses, the scope of the hearing, and *Terrazas*. The Court will re-read the briefing.

Court is adjourned for the day.

**END TIME: 5:00 p.m.**

cc Gallagher & Kennedy, P C , Counsel for Shore Family (Electronically Mailed)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (Electronically Mailed)  
Stone & Magnanini, Co-Counsel Brown Family, 150 John F Kennedy Pkwy, 4<sup>th</sup> Fl, Short Hills, NJ 07078  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (Electronically Mailed)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company (Electronically Mailed)  
Perkins, Coie, Brown & Bain, Counsel for KTVK-TV, 2901 N Central, Ste 2000, Phoenix, AZ 85012-2788

Victim Services (e)  
Division PTB (e)  
Court Administration  
Jeanne Hicks, Clerk of Court  
Customer Service Supervisor, Verde